IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

Crl.MC.No. 3442 of 2007()

CC.244/2003 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II,NEYYATTINKARA

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PETITIONERS: ACCUSED 2 TO 4:

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1. **MARIA THANKAMMAL, AGED 72 YEARS, HOUSE NO.25/62, AYYANKAVILAI, THICKURICHI P.O., PIN - 629 168.**

2. **SINGARA RAJAN, AGED 56, HOUSE NO.25/62-D1, AYYANKAVILAI, THICKURICHI P.O., PIN - 629 268.**

3. **ECLIN, AGED 30, W/O.LAWRENCE, HOUSE NO.3/87, YELANKOTTU VILAI, POOVANCODE, VEYYANOOR P.O.**

BY ADV. SRI.R.GOPAN

RESPONDENTS: COMPLAINANTS:

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1. **STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**

2. **KOCHU KUNJU NADAR, MANNAM VILLA VEEDU, KARAMANOOR, PARASSALA P.O.**

BY PUBLIC PROSECUTOR SRI. P. RAVEENDRA BABU

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 16/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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Crl.M.C.No. 3442 of 2007

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Dated this the 16th day of November, 2007

ORDER

Petitioners are accused 2 to 4. They face allegations in a prosecution under Section 498A IPC. They are relatives of the husband of the victim in this case. The crux of the allegations is that the accused persons including the deceased-1st accused subjected the victim/ wife of the 1st accused to matrimonial cruelty of the culpable variety punishable under Section 498A IPC. Proceedings were initiated on the basis of the private complaint filed by the father of the victim as early as in January, 2002. The said complaint was referred to the Police. Investigation was conducted. Final report was filed. Cognizance was taken by the learned Magistrate as early as in 2003 and the calender case was registered. The petitioners it is submitted at the Bar have not so far appeared before the learned Magistrate though a period of 4 years has elapsed from the date on which cognizance has been taken. The petitioners have now rushed to this Court with a short prayer that the powers under Section 482 Cr.P.C may be invoked to quash the proceedings against the

petitioners.

2. What is the reason? The learned counsel for the petitioners submits that the allegations are improbable and cannot be accepted. They are on the face of it, untrue and absurd. No prudent person can proceed to act on such allegations. They are not true or even probable. In these circumstances, it is prayed that the proceedings may be quashed invoking the powers under Section 482 Cr.P.C. The learned counsel for the petitioners relies on the decision in Smt.Nagawwa v. Veeranna Shivalingappa Konjalgi and others (AIR 1976 S.C. (1947)

3. I have gone through the complaint filed by CW1- the father of the de facto complainant. I have gone through the allegations raised in the final report submitted by the Police. I have also taken note of the admitted conduct of the petitioners who have not appeared so far in this proceedings initiated as early as in 2003. I am called upon to invoke the extraordinary inherent jurisdiction available to this Court under Section 482 Cr.P.C. I must alertly remind myself of the nature,quality and contours of the jurisdiction which I am called upon to invoke and

exercise. The jurisdiction which is sought to be invoked is the extraordinary inherent jurisdiction available under Sec.482 Cr.P.C. It is by now trite that such jurisdiction has to be invoked sparingly and in exceptional cases only in aid of justice. Such jurisdiction is certainly not to be invoked as a matter of course. Normally and ordinarily the inductee who claims premature termination of the proceedings must take resort to provision under Sec. 239 Cr.P.C to claim discharge. The Code of Criminal Procedure does contemplate a situation, in a case instituted on a police complaint also, where the allegations raised may be groundless. In such event, the inductee is to normally take resort to the provisions under Section 239 Cr.P.C. Not that this Court lacks jurisdictional competence in an appropriate case to invoke the powers under Section 482 Cr.P.C and quash the proceedings; but the Court must be satisfied, that facts of the case are such that the inductees must be saved of the undeserved trauma of resorting to the ordinary and normal course to claim discharge. Exceptional reasons must be shown to exist. I shall not advert to details lest that lest the same would adversely affect the interests of parties at the later stages.

Suffice it to say that I am not satisfied that the extraordinary inherent jurisdiction in aid of justice can or ought to be invoked. This I am satisfied is a fit case where the petitioners must appear before the learned Magistrate and seek discharge if they are entitled to the same under Section 239 Cr.P.C.

4. In the result this petition is dismissed I may reiterate that I have not intended to express any opinion on the entitlement of the petitioner to claim discharge under Sec.239 Cr.P.C. They can raise all their contentions before the learned Magistrate and the learned Magistrate must consider the same under Sec.239/240 Cr.P.C.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE